

THE HONORABLE MARSHA J. PECHMAN

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JUSTIN REESE, STEVEN COX, MICAH
WITTENBORN and SHELBY BALL, on
behalf of themselves and all others similarly
situated,

Plaintiffs,

v.

DYCOM INDUSTRIES, INC., a Florida
corporation; PRINCE TELECOM, LLC, a
Delaware limited liability company, f/k/a
PRINCE TELECOM, INC.,

Defendants.

CLASS ACTION

NO. C09-0606 MJP

**[PROPOSED] ORDER
PRELIMINARILY APPROVING
SETTLEMENT, DIRECTING
ISSUANCE OF CLASS NOTICE, AND
SCHEDULING FAIRNESS HEARING**

NOTE ON MOTION CALENDAR:
Friday, January 8, 2010

WHEREAS, the parties have applied for an order preliminarily approving the settlement of this action as stated in the Stipulation of Settlement on file with the Court, which, together with the exhibits attached thereto, sets forth the terms and conditions for a proposed settlement of this class action and for dismissal of the action with prejudice upon the terms and conditions set forth therein;

WHEREAS, the Court has read and considered the Stipulation of Settlement, the exhibits attached thereto, and the briefing submitted in support of preliminary approval of the settlement and is fully advised;

1 NOW, THEREFORE, IT IS HEREBY ORDERED:

2 1. Unless otherwise provided herein, all capitalized terms in this order shall have
3 the same meaning as set forth in the Stipulation of Settlement previously filed with this Court.

4 2. For purposes of settlement, the Court certifies this case as class action under
5 Rule 23 and a collective action under the Fair Labor Standards Act, 29 U.S.C. § 216(b). The
6 Court likewise certifies the following Settlement Class for all claims: "All current and former
7 employees of Prince who have worked as Installers in the State of Washington from May 1,
8 2005 through December 18, 2009.

9 3. The Court preliminarily approves the Stipulation of Settlement and the terms set
10 forth therein—including the relief afforded the Settlement Class, the enhancement awards to
11 the Class Representatives, and the payment of attorneys' fees and costs to Class Counsel
12 (including costs for notice and claims administration)—as being fair, reasonable and adequate.
13 The Stipulation of Settlement is the result of arm's-length negotiations between experienced
14 attorneys who are familiar with class action litigation in general and with the legal and factual
15 issues of this case in particular.

16 4. The Court preliminarily approves The Garden City Group, Inc. as the Claims
17 Administrator and preliminarily approves payment of the charges of the Claims Administrator
18 pursuant to the terms of the Stipulation of Settlement.

19 5. For purposes of determining whether the settlement should be finally approved,
20 a fairness hearing shall be held on _____, 2010, at _____.m. in the courtroom of
21 the Honorable Marsha J. Pechman at the U.S. Courthouse, 700 Stewart Street, Seattle,
22 Washington 98101. The Court will hear arguments concerning whether the proposed
23 settlement on the terms and conditions provided for in the Stipulation of Settlement should be
24 granted final approval by the Court as fair, reasonable and adequate.

25 6. The Court approves, as to form and content, the Notice of Proposed Class
26 Action Settlement and Claim Form (the "Notice Packet") attached to the Stipulation of

1 Settlement as Exhibits A and B. In addition, the Court finds that distribution of the Notice
 2 Packet substantially in the manner set forth in Paragraph 7 of this order will meet the
 3 requirements of due process and applicable law, will provide the best notice practicable under
 4 the circumstances, and shall constitute due and sufficient notice to all individuals entitled
 5 thereto.

6 7. The procedure for distributing the Notice Packet shall be as follows:

7 (a) Within fifteen (15) calendar days of the signing of the entry of this
 8 Order, Defendants shall produce a list to the Claims Administrator that contains the names,
 9 social security numbers, last known addresses, and dates of employment for every potential
 10 member of the Settlement Class. In conformance with Section 14(c) in the Stipulation of
 11 Settlement, the Claims Administrator shall then determine the estimated minimum gross
 12 awards to be paid to Class members, assuming for purposes of the preliminary determination
 13 that every Class member will submit a valid and timely claim.

14 (b) Within fifteen (15) calendar days of receiving the relevant Settlement
 15 Class Member information, the Claims Administrator shall mail a Notice Packet to each
 16 potential Settlement Class Member via first class mail. If a Notice Packet is returned as
 17 undeliverable with a forwarding address provided by the U.S. Postal Service, the Claims
 18 Administrator will promptly resend the Notice Packet to that forwarding address along with a
 19 brief letter stating that the recipient of the Notice Packet has an additional fifteen (15) days
 20 beyond the original deadline set forth on the Class Notice to submit a Claim Form. If a Notice
 21 Packet is returned undeliverable and without a forwarding address, the Claims Administrator
 22 will perform one skip trace only and will resend Notice Packets to those Settlement Class
 23 Members for whom new addresses are obtained along with a brief letter stating that the
 24 recipient of the Notice Packet has an additional fifteen (15) days beyond the original deadline
 25 set forth on the Class Notice to submit a Claim Form.
 26

(c) The Claims Administrator shall also mail a Notice Packet to any Settlement Class Member who contacts the Claims Administrator and requests a Notice Packet. If the Claims Administrator determines that the Settlement Class Member's original Notice Packet was returned as undeliverable, the Claims Administrator will include with the remailed Notice Packet a brief letter stating that the recipient has an additional fifteen (15) days beyond the original deadline set forth on the Class Notice to submit a Claim Form.

(d) Notice under the Stipulation of Settlement is deemed complete upon the initial mailing of the Settlement Notices as set forth in Paragraph 6(b) of this order.

8. If the Court grants Final Approval, each member of the Settlement Class who submits a valid and timely Claim Form shall be entitled to receive a proportionate share of the NFV. To be considered timely, a Claim Form must be mailed to the Claims Administrator and postmarked no later than forty-five (45) days from the initial mailing of the Notice Packets or sixty (60) days if the member's Notice Packet was returned as undeliverable. Unless he has excluded himself from the settlement, any Class Member who fails to submit a valid and timely Claim Form will not receive a share of the Class Payment but will be bound nevertheless by the terms of the Stipulation of Settlement.

9. Members of the Settlement Class shall be entitled to opt out of the Class by submitting a written statement requesting exclusion from the Settlement via regular mail to the Claims Administrator within forty-five (45) days of the initial mailing of the Settlement Notices or 60 days if the member's Notice Packet was returned as undeliverable, as further provided below:

(a) The written request for exclusion must contain the full name, current home or mailing address and last four digits of the Social Security number of the person requesting exclusion, and it must include the statement "I wish to be excluded from the Settlement of the case entitled *Reese, et al. v. Dycom Industries, Inc. and Prince Telecom, LLC*,

1 Case No. C09-0606 MJP.” The written request must be signed by the person requesting
2 exclusion.

3 (b) The written request for exclusion must be mailed to the Claims
4 Administrator must be postmarked on or before the deadline set forth in the Class Notice,
5 though 15 days shall be added for any employee whose Notice Packet was originally returned
6 as undeliverable.

7 10. Any Settlement Class Member may appear at the fairness hearing and show
8 cause, if he or she has any, as to why the terms of the proposed Stipulation of Settlement
9 should or should not be approved as fair, reasonable and adequate, or why a judgment should
10 or should not be entered thereon; provided, however, that no Settlement Class Member or any
11 other person shall be heard or entitled to contest the approval of the terms and conditions of
12 the proposed Stipulation of Settlement or, if approved, the judgment to be entered thereon,
13 unless that person has filed and served a valid and timely written objection. To be valid, the
14 written objection must be signed and must set forth the Settlement Class Member’s address,
15 telephone number, and the name of the litigation (*Reese et al. v. Dycom Industries, Inc. and*
16 *Prince Telecom, LLC*, Case No. C09-0606 MJP). To be timely, the written objection must be
17 filed with the Court and postmarked to Class Counsel and counsel for Defendants no later than
18 thirty (30) days after the initial mailing of Notice to the Class. In order to be considered by the
19 Court, the written objection must clearly explain why the Settlement Class Member objects to
20 the proposed Settlement and must state whether the Settlement Class Member or someone on
21 his or her behalf intends to appear at the fairness hearing. All timely objections shall be
22 considered and ruled upon by the Court at the fairness hearing. Any Settlement Class Member
23 who does not submit a valid and timely objection in the manner provided above shall be
24 deemed to have waived such objection and shall forever be foreclosed from making any
25 objection to the fairness or adequacy of the proposed Stipulation of Settlement, unless
26 otherwise ordered by the Court.

11. All papers in support of final approval of the Stipulation of Settlement shall be filed and served no later than _____.

12. At the fairness hearing, the Court shall determine whether the proposed Stipulation of Settlement shall be finally approved.

13. The Court reserves the right to adjourn the date of the fairness hearing without further notice to the Settlement Class Members and retains jurisdiction to consider all further applications arising out of or connected with the proposed Stipulation of Settlement.

14. If final approval does not occur, or if the Stipulation of Settlement is terminated or canceled pursuant to its terms, the Parties shall be deemed to have reverted to their respective status as of the date and time immediately prior to the execution of the Stipulation of Settlement, and the Stipulation of Settlement shall be deemed null and void, shall be of no force or effect whatsoever, and shall not be admitted, referred to or utilized by any Party for any purpose whatsoever.

DONE IN OPEN COURT this _____ day of _____, 2010.

HONORABLE MARSHA J. PECHMAN
U.S. DISTRICT COURT JUDGE

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